

Disciplinary Guidelines

3/02 Edition



Issued by
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INTRODUCTION

The Respiratory Care Board of California (Board) licenses the practice of respiratory care in the State of California. The Board is mandated to protect the public from unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. The Board has the authority to issue or deny, suspend, and revoke licenses to practice respiratory care as provided in the Respiratory Care Practice Act and respiratory care regulations (Business and Profession Code, sections 475, 490, 3718, 3733, 3750, 3750.5, 3754, 3754.5, 3755, and California Code of Regulations, sections 1399.303, 1399.370, 1399.374).

The Board's mission is to protect and serve the consumer by enforcing the Respiratory Care Practice Act and its regulations, expanding the delivery and availability of services, and promoting the profession by increasing public awareness of respiratory care as a profession and supporting the development and education of all respiratory care practitioners.

The Board strives to ensure that only eligible, qualified, capable and competent individuals are licensed, and to expeditiously respond to all consumer complaints by efficiently and effectively investigating every complaint and pursuing disciplinary action in all appropriate cases. Finally, the Board strives to ensure that appropriate post-disciplinary monitoring occurs.

The Board's disciplinary guidelines were designed for use by Administrative Law Judges, attorneys, licensees and others involved in the Board's disciplinary process and are to be followed in all disciplinary actions involving the Board. The Board has the final authority over the disposition of its cases, and to complete its work, it utilizes the Office of the Attorney General and the Office of Administrative Hearings.

This manual includes factors to be considered in aggravation or mitigation, guidelines to be used by Administrative Law Judges for a violation(s) of specific statutes, and standard and speciality probationary terms and conditions.

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that aggravating or mitigating circumstances and other factors may necessitate deviation from these guidelines in particular cases.

PUBLIC RECORD

It is the Board's policy that all letters of license denial, citations issued, legal pleadings filed and final decisions will be published as a matter of public record.

COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including but not limited to expert consultant opinions and services. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct had required investigation and prosecution, not upon the profession as a whole.

PROBATION MONITORING

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. The purpose is NOT for the Board to rehabilitate the probationer. Probation is a privilege afforded by the Board:

- 1) to allow for the probationer's rehabilitation if that is his/her choice;
- 2) to allow the probationer an opportunity to practice in a professional manner with restrictions and guidance from a community support system and designated probation monitor to prevent future occurrences, and
- 3) to allow for education of the individual as to the responsibilities, requirements and professionalism mandated of a respiratory care practitioner.

It is the policy of the Board that if a probationer is found to be in violation of any term of probation at any time during the probation period, the Board shall immediately be notified of the violation so that disciplinary action may be considered.

CITATIONS

The Board has the authority to issue citations and fines for violations of several sections of the Respiratory Care Practice Act and its regulations. Citations issued may include an order for abatement, a fine, or both. Citations are issued at the discretion of the Board. The issuance of a citation is separate from and may be in addition to any other administrative discipline, civil remedies, or criminal penalties. [Reference: California Code of Regulations section 1399.380(g)]. However, an applicant who stipulates to the issuance of a citation and fine in lieu of the Board filing a formal statement of issues is not subject to additional discipline for the same offense. Any prior citation may be used in future actions as aggravating evidence.

STIPULATED SETTLEMENTS

The Board will consider stipulated settlements to promote cost effectiveness and to expedite disciplinary decisions if such agreements are consistent with the Board's mission.

The following is incorporated by reference in Section 1399.374 of Division 13.6 of Title 16 of the California Code of Regulations

DISCIPLINARY GUIDELINES

3/02 Edition

The following are examples of aggravating and mitigating circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:

EVIDENCE IN AGGRAVATION OF PENALTY

1. Patient's trust, health, safety or well-being was jeopardized.
2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc...).
3. Violations involved or were in the presence of children.
4. History of prior discipline.
5. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
6. Perjury on official Board forms.
7. Violent nature of crime or act.
8. Violation of Board Probation.
9. Failure to provide a specimen for testing in violation of terms and conditions of probation.

EVIDENCE IN MITIGATION OF PENALTY

1. Recognition by Respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.
2. Respondent was forthcoming and reported violation or conviction to the Board.
3. A substantial amount of time since the violation or conviction (generally 4 or more years) occurred.
4. No prior criminal or disciplinary history.

DISCIPLINARY GUIDELINES SUMMARY

for use by Administrative Law Judges

These guidelines were developed for use by Administrative Law Judges. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 3753.5.

The following page includes a brief description and suggestion for the use of each specialty condition of probation.

<u>Maximum Penalty:</u>	<u>Revocation</u>
<u>Medium Penalty:</u>	<u>Revocation stayed, 3-5 years probation</u>
<u>Minimum Penalty:</u>	<u>Revocation stayed, 2 years probation</u>

Standard Conditions of Probation for All Disciplinary Actions Resulting in Probation

Obey All Laws
Quarterly Reports
Probation Monitoring Program
Probation Monitoring Costs
Employment Requirement
Notice to Employer
Changes of Employment or Residence
Cost Recovery
Tolling for Out-of-State Residence or Practice
Valid License Status
Violation of Probation
Completion of Probation

Standard Conditions of Probation for All Disciplinary Actions That Involve Alcohol and/or Drugs in Any Manner

Standard Conditions Listed Above and
Work Schedules
Biological Fluid Testing
Abstention from Use of Mood Altering Substances

Specialty Conditions of Probation

Supervisor Quarterly Reports
Restriction of Practice
Direct Supervision
Additional Continuing Education
Education Course Work
Statute and Regulation Examination
Suspension
Alcohol and Drug Treatment
Competency Examination
Psychological Evaluation
Physical Examination

SPECIALTY CONDITIONS OF PROBATION

DESCRIPTIONS AND RECOMMENDATIONS FOR USE

(Actual language for each term and condition is located at the end of this manual)

Supervisor Quarterly Reports

Recommended for use when evidence presents a possible alcohol or drug addiction or in cases directly related to the functions and responsibilities of a respiratory care practitioner. The Respondent's employer is required to complete a one-page form every three months, updating the Board on any irregularities.

Restriction of Practice

Recommended for use in any case that involves dishonesty or negligence, incompetence or unprofessional conduct in his or her duties as a respiratory care practitioner or any other circumstances that may directly affect the patient safety or the Board's ability to monitor the probationer. This condition is three-fold. Respondent will be restricted from working in the capacity of a supervisor or manager and may include three additional restrictions.

Direct Supervision

Recommended for use in cases where evidence of drug or alcohol addiction exists or in any case where negligence, incompetence, or unprofessional conduct in his or her duties as a respiratory care practitioner exists. This condition requires direct supervision, defined as a supervisor within immediate distance (same hospital floor), at all times during practice by Respondent.

Additional Continuing Education

Recommended for use in any case where negligence, incompetence, or unprofessional conduct in his or her duties as a respiratory care practitioner exists. This condition requires Respondent to gain additional continuing education than what is required as part of the renewal of his/her respiratory care practitioner license.

Education Course Work

Recommended for use in any case where negligence, incompetence, or unprofessional conduct in his or her duties as a respiratory care practitioner exists or in any case where the Respondent would benefit from additional course work (i.e. possible cocaine addiction - class on the effects of cocaine or drugs).

Statute and Regulation Examination

Recommended for use in any case where it is believed that Respondent is not aware that he or she has jeopardized his/her license or is unclear on the Board's legislative intent and authority.

Suspension

Recommended for use as an additional penalty. Respondent would be required to temporarily cease practicing as a respiratory care practitioner for a period of time as ordered.

Alcohol and Drug Treatment

Recommended for use in cases where evidence of drug or alcohol addiction exists. This condition requires Respondent to enter into a formal rehabilitation program.

Competency Examination

Recommended for use if it is suspected that Respondent may not be competent to perform as a respiratory care practitioner, weighted on the gravity of negligence or incompetence.

Psychological Evaluation

Recommended for use when circumstances indicate Respondent may have a mental instability which in turn, may affect his or her ability to practice safely. Respondent would be required to have a full evaluation performed by a licensed psychiatrist or psychologist to determine if he or she can practice safely.

Physical Examination

This specialty term and condition is rarely ordered. Recommended for use in cases where patient safety is at risk.

DISCIPLINARY GUIDELINES BY CODE

for use by Administrative Law Judges
and in order of sections of the Business and Professions Code

All decisions shall include cost recovery in accordance with Business and Professions Code section 3753.5.

SECTION 3750(a):

FALSE / MISLEADING ADVERTISING

Maximum Penalty: Revocation stayed, 5 years probation

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Direct Supervision [18]
Additional Continuing Education [19]
Suspension [22]

SECTION 3750(b):

FRAUD IN THE PROCUREMENT OF ANY LICENSE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Quarterly Reports [12]
Statute and Regulation Examination [21]

If Warranted: Additional Continuing Education [19]
Suspension [22]

Note: "Good" practice while unauthorized or unlicensed shall NOT mitigate such practice

SECTION 3750(c):

KNOWINGLY EMPLOYING UNLICENSED PERSONS

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Direct Supervision [18]
Suspension [22]

SECTION 3750(d):

CONVICTION OF A CRIME

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]

If Warranted: Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Statute and Regulation Examination [21]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

Note: Nature of crime should be cross referenced if applicable, i.e., Bodily Injury Conviction - also see 3752.5

SECTION 3750(e):

IMPERSONATING OR ACTING AS A PROXY FOR AN APPLICANT

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 5 years probation

Conditions of Probation

Required: Revocation stayed, 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Suspension [22]

SECTION 3750(f):

NEGLIGENCE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Statute and Regulation Examination [21]
Competency Examination [24]

If Warranted: Suspension [22]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750(g):

Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

Note: Nature of crime should be cross referenced if applicable, i.e., Bodily Injury Conviction - also see 3752.5

SECTION 3750(h):

AIDING OR ABETTING A VIOLATION

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Suspension [22]

SECTION 3750(i):

AIDING OR ABETTING UNLAWFUL PRACTICE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Restriction of Practice [17]
Additional Continuing Education [19]
Direct Supervision [18]
Education /Course Work [20]
Suspension [22]

SECTION 3750(j):

COMMISSION OF ANY FRAUDULENT, DISHONEST OR CORRUPT ACT

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Restriction of Practice [17]
Statute and Regulation Examination [21]

If Warranted: Direct Supervision [18]
Suspension [22]
Psychological Evaluation [25]

SECTION 3750(k):

PATIENT, HOSPITAL OR OTHER RECORDS - ENTRIES

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Statute and Regulation Examination [21]
Competency Examination [24]

If Warranted: Suspension [22]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750(l):

CHANGING PRESCRIPTION / FALSIFYING VERBAL OR WRITTEN ORDERS

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Statute and Regulation Examination [21]
Competency Examination [24]

If Warranted: Biological Fluid Testing [14]
Abstinence from Use of Mood Altering Substances [15]
Suspension [22]
Alcohol and Drug Treatment [23]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750(m):

DISCIPLINE TAKEN BY ANOTHER AGENCY

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Note: Terms are dependent upon actual grounds or offense

SECTION 3750(n):

FAILURE TO FOLLOW INFECTION CONTROL GUIDELINES

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Statute and Regulation Examination [21]
Competency Examination [24]

If Warranted: Suspension [22]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750(o):

INCOMPETENCE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Statute and Regulation Examination [21]
Competency Examination [24]

If Warranted: Suspension [22]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750(p):

PATTERN OF SUBSTANDARD CARE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 5 years probation

Conditions of Probation

Required: Revocation stayed, 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Statute and Regulation Examination [21]
Competency Examination [24]

If Warranted: Suspension [22]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750.5(a):

**OBTAINED / POSSESSED / ADMINISTERED / FURNISHED
ANY CONTROLLED SUBSTANCE OR DANGEROUS DRUG**

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
 Standard Terms and Conditions of Probation [1-12]
 Work Schedules [13]
 Biological Fluid Testing [14]
 Abstention from Use of Mood Altering Substances [15]
If Warranted: Supervisor Quarterly Reports [16]
 Restriction of Practice [17]
 Direct Supervision [18]
 Additional Continuing Education [19]
 Education /Course Work [20]
 Statute and Regulation Examination [21]
 Suspension [22]
 Alcohol and Drug Treatment [23]
 Competency Examination [24]
 Psychological Evaluation [25]
 Physical Examination [26]

SECTION 3750.5(b):

**USED CONTROLLED SUBSTANCE, DANGEROUS DRUG OR
ALCOHOLIC BEVERAGE, IN DANGEROUS MANNER**

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
 Standard Terms and Conditions of Probation [1-12]
 Work Schedules [13]
 Biological Fluid Testing [14]
 Abstention from Use of Mood Altering Substances [15]
If Warranted: Supervisor Quarterly Reports [16]
 Restriction of Practice [17]
 Direct Supervision [18]
 Additional Continuing Education [19]
 Education /Course Work [20]
 Statute and Regulation Examination [21]
 Suspension [22]
 Alcohol and Drug Treatment [23]
 Competency Examination [24]
 Psychological Evaluation [25]
 Physical Examination [26]

SECTION 3750.5(c):

**CONVICTION OF A CRIMINAL OFFENSE INVOLVING
SUBDIVISIONS (a) OR (b), FALSIFICATION OF A RECORD
PERTAINING TO THE SUBSTANCES DESCRIBED IN
SUBDIVISION (a)**

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
If Warranted: Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Statute and Regulation Examination [21]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750.5(d):

**COMMITTED OR CONFINED BY COURT FOR INTEMPERATE
USE OF OR RELATING TO ADDICTION TO ANY
SUBSTANCES DESCRIBED IN SUBDIVISIONS (a) OR (b)**

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 5 years probation

Conditions of Probation

Required: Revocation stayed, 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
If Warranted: Additional Continuing Education [19]
Education /Course Work [20]
Statute and Regulation Examination [21]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750.5(e):

**PATIENT, HOSPITAL OR OTHER RECORDS - ENTRIES
PERTAINING TO THE SUBSTANCES DESCRIBED IN
SUBDIVISION (a)**

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Work Schedules [13]

Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Suspension [22]

Alcohol and Drug Treatment [23]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3752.5:

**A CRIME INVOLVING BODILY INJURY OR ATTEMPTED
BODILY INJURY**

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]

If Warranted: Work Schedules [13]

Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Education /Course Work [20]

Statute and Regulation Examination [21]

Suspension [22]

Alcohol and Drug Treatment [23]

Competency Examination [24]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3752.6: **A CRIME INVOLVING SEXUAL MISCONDUCT IS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF RESPIRATORY CARE**

See 3752.7

SECTION 3752.7: **SEXUAL CONTACT W/PATIENT / SEX OFFENSES CONVICTION**

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation or Denial of License

See statute.

SECTION 3754.5 **OBTAIN LICENSE BY FRAUD OR MISREPRESENTATION**

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Additional Continuing Education [19]
Suspension [22]

SECTION 3755: **UNPROFESSIONAL CONDUCT**

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Statute and Regulation Examination [21]
Competency Examination [24]

If Warranted: Suspension [22]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3760:Authority 3750(g)**UNLAWFUL PRACTICE**Maximum Penalty: Revocation or Denial of LicenseMinimum Penalty: Revocation stayed, 3 years probationConditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]
Suspension [22]

If Warranted: Restriction of Practice [17]
Additional Continuing Education [19]

SECTION 3761:Authority 3750(g)**MISREPRESENTATION (FOR LICENSEES)**Maximum Penalty: Revocation or Denial of LicenseMinimum Penalty: Revocation stayed, 3 years probationConditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]
Suspension [22]

If Warranted: Restriction of Practice [17]
Additional Continuing Education [19]

PROBATIONARY TERMS AND CONDITIONS

A probationary or conditional license is generally issued for a period between 2 and 5 years, dependant upon whether any aggravating or mitigating factors exist.

STANDARD CONDITIONS

The standard conditions are conditions which are imposed on each and every probationer regardless of cause for discipline.

1. **OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the Board in writing within 14 days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.

2. **QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. **PROBATION MONITORING PROGRAM** Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

4. **PROBATION MONITORING COSTS** All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.

5. **EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his/her probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

6. **NOTICE TO EMPLOYER** Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall make each hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of Respondent's supervisors or directors.

7. **CHANGES OF EMPLOYMENT OR RESIDENCE** Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his/her physical residence address as well.

8. **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ _____ and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she shall be required, instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for these costs.

9. **TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE** Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.
10. **VALID LICENSE STATUS** Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.
11. **VIOLATION OF PROBATION** If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.
12. **COMPLETION OF PROBATION** Upon successful completion of probation, Respondent's license shall be fully restored.

STANDARD ALCOHOL/ DRUG CONDITIONS

13. **WORK SCHEDULES** Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of her/his current work schedule at all times for each place of employment.

Failure to submit current work schedules on a continuous basis, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

14. **BIOLOGICAL FLUID TESTING** Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.

At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

Failure to submit to testing or appear as requested by any Board representative for testing, as directed shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

15. **ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s).

Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers.

SPECIALTY CONDITIONS

The conditions imposed are dependent upon the violation(s) committed.

16. **SUPERVISOR QUARTERLY REPORTS** Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.

17. **RESTRICTION OF PRACTICE** Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions.

☐ Respondent is prohibited from working in home care unless it is under direct supervision and personal observation.

☐ Respondent is prohibited from working for a registry.

☐ Respondent is prohibited from working with _____
(i.e. neonates, elderly, comatose patients, children)

18. **DIRECT SUPERVISION** During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while he/she is functioning as a licensed respiratory care practitioner. The appropriate level of supervision must be approved by the Board prior to commencement of work.

19. **ADDITIONAL CONTINUING EDUCATION** Respondent shall be required to complete additional Continuing Education beyond that which is required for license renewal. A minimum of fifteen (15) additional hours is required for each year of probation. Respondent shall submit proof to the Board of successful completion of all continuing education requirements.

20. **EDUCATION/COURSE WORK** Respondent shall be required to successfully complete _____ semester (or its equivalent) units of education courses in California at an institution approved by the Board in addition to the continuing education required for the renewal of licensure. The course selection shall be submitted to and approved by the Board in advance. The Board, at its discretion, may require the education to be in a specific area of study. Successful completion is a grade of "C" or "70%" or better for any completed course.

Respondent shall be required to submit proof of successful completion in the form of official transcripts no later than six (6) months prior to the date probation is scheduled to end.

Failure to timely and successfully complete approved courses at an approved institution(s), or provide documentation thereof shall constitute a violation of probation.

Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

21. **STATUTE AND REGULATION EXAMINATION** Within six months of the effective date of this decision, Respondent shall be required to take and pass an examination on the Respiratory Care Practice Act, the Respiratory Care Practitioner Regulations, and other provisions that affect the practice of respiratory care. This examination shall be taken on a date specified by the Board.

Respondent shall be responsible for paying all costs for any scheduled examination(s) prior to taking any examination [\$50 per each scheduled exam].

Failure to appear for any scheduled examination, or to pass the examination after two attempts shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Failure to submit timely fees for one or more examinations shall constitute a violation of probation.

22. **SUSPENSION** As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of _____, beginning the effective date of this decision. If not employed as a respiratory care practitioner or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

23. **ALCOHOL AND DRUG TREATMENT** Respondent, at his/her expense, shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board.

Respondent shall inform the program director, psychiatrist or psychologist, of his/her probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing. Positive results shall be reported immediately to the Board and shall be used in administrative discipline.

24. **COMPETENCY EXAMINATION** Within 6 months of the effective date of this decision and/or as designated by the Board, Respondent shall be required to take and pass a written competency examination as designated by the Board. This examination shall be taken on a date specified by the Board and Respondent shall pay all examination fees.

Respondent's failure to appear for or pass any scheduled examination will be noted as failure to pass or failure to successfully complete the examination. Respondent's failure to successfully complete the examination after one scheduled examination, shall constitute incompetence and a violation of probation for the purposes of disciplinary proceedings and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Failure to pay costs for the examination, will constitute a violation of probation.

25. **PSYCHOLOGICAL EVALUATION** Within _____ days of the effective date of this decision, and on a periodic basis thereafter as may be required or directed by the Board, Respondent, at his/her own expense, shall have a mental health examination, including psychological assessment and testing as appropriate, to determine his/her capacity to perform all professional duties with safety to self and to the public. The examination will be performed by a licensed psychiatrist or psychologist appointed by the Board. Respondent shall provide this evaluator with a copy of the Board's disciplinary order prior to the evaluation. The examiner must submit a written report of that assessment and recommendations to the Board. Recommendations for cessation of practice for safety of patients, treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the Respondent. All costs incurred for evaluation and treatment are the responsibility of the Respondent.

Any examination required of a Respondent whose violation(s) involves substance abuse must be performed by a licensed psychiatrist or psychologist who has established expertise in the field of alcohol and drug assessment, treatment, and recovery.

Respondent shall execute a release authorizing the evaluator to divulge the aforementioned information to the Board.

26. **PHYSICAL EXAMINATION** Within 45 days of the effective date of this decision, Respondent, at his/her expense, shall undergo an assessment of his/her physical condition by a physician appointed by the Board. Respondent shall provide the examining physician with a copy of the Board's disciplinary order prior to the examination. The examining physician must submit a written report of his/her findings to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board on forms provided by the Board.

If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board within three (3) working days. The Board shall notify Respondent in writing of the examining physician's determination of unfitness to practice and shall order the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Board.

Respondent shall execute a release authorizing the physician to divulge the aforementioned information to the Board.